IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 22ND OCTOBER 2007 / 30TH ASWINA 1929

Tr.P(C).No. 115 of 2007()

OP.10/2005 of MUNI-MAGI.COURT, PERAMBARA

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PETITIONER/PETITIONER

NAGATH VIMALA,
W/O.KUNHANANDAN NAIR, VANNARATH HOUSE,
CHERUVANNUR VILLAGE, MUYIPOTH DESOM,
P.O.MUYIPOTH.

BY ADV. SRI.P.K.SURESH KUMAR
SRI.K.P.SUDHEER

RESPONDENT: RESPONDENT

K.P.SUJATHA,
W/O.ARAVINDAKSHAN, KACHERIPARAMBIL HOUSE,
CHERUVANNUR VILLAGE, MUYIPOTH DESOM,
P.O.MUYIPOTH.

BY ADV. SRI.P.C.SASIDHARAN

THIS TRANSFER PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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Tr.P(C).No.115 of 2007

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Dated this the 22nd day of October, 2007.

JUDGMENT

This Transfer Petition is filed to transfer O.P.No.10 of 2005 pending before the Munsiff-Magistrate Court, Perambra to any other court of similar jurisdiction in Kozhikode District under Section 24 of C.P.C. The Transfer Petition is made on the ground that the Presiding Officer is biased and the party would not get justice.

2. Learned counsel for the transfer petitioner contends that Section 24 of C.P.C. enables the High Court to transfer a petition from one court to another court. The jurisdiction is conferred on the Munsiff Court to try an election petition by virtue of Section 88(a) and Section 88(2) of the Kerala Panchayat Raj Act, 1994 (hereinafter referred to as "the Act"). Section 88(1) of the Act states thus:

> "88. **The Court competent to try election petitions**:- (1)The court having jurisdiction to try an election petition shall be:-
>
> (a) in the case of a Village Panchayat, the Munsiff's Court having jurisdiction over the place in which the headquarters of the Panchyayat is located;"

Section 88(2) of the Act stipulates that the Government shall, in

consultation with the High Court notify the appropriate Courts in the Gazette. So, a combined reading of Section 88(1)(a) and Section 88(2) of the Act would reveal that an election petition shall be tried by a Munsiff, who is having jurisdiction over the place in which the headquarters of the Panchayat is located and that the Government in consultation with the High Court notify that court to do so.

3. Learned counsel for the respondent has brought to my notice a decision of this Court reported in **Aisha Potti** v. **The Returning Officer** - 2002 (2) K.L.T. 146. It was a case where the question was regarding the competency of an Additional District Court to try an election petition. This Court held that by virtue of Section 88(2) of the Act notification the District Court Kollam alone is competent to try the election petition. So, the competency of a court to try an election petition depends upon the satisfaction of the ingriedents in Section 88 of the Act. Learned counsel for the transfer petitioner would contend that Section 24 of C.P.C. gives wide powers to the High Court to do so. A reading of Section 24 of C.P.C. would show that the power of the High Court to transfer a case for trial and disposal also depends upon the competency of that court to try and dispose of the same.

4. In this case unless there is a Governmental notification in consultation with the High Court notifying a particular court as a competent court to try the election petition of that area, any other court will not get jurisdiction to try that case. So, any

court other than Perambra Munsiff-Magistrate court in Kozhikode will not get jurisdiction to try an election petition, which has taken place in the jurisdiction over which Perambra Munsiff Court functions. So, unless there is a Governmental notification to try in consultation with the High Court one cannot hold about the competency of any other Munsiff Court. Therefore, Section 24(1)(a) of C.P.C. itself is sufficient to hold that this Court cannot transfer the election petition to another court in the backdrop of Section 88(1)(a) and Section 88(2) of the Act.

Therefore, the Transfer Petition lacks merit and it is dismissed.

M.N.Krishnan,
Judge.

ess 22/10